

**IN RE: REALPAGE, INC., RENTAL  
SOFTWARE ANTITRUST LITIGATION  
(NO. II)**

MDL No. 3071

## JURY DEMAND

**Judge Waverly D. Crenshaw, Jr.**

**This Document Relates to:**  
**ALL CASES**

During the Court's January 4, 2024 telephonic conference with Lead Counsel and counsel for Defendants, the Court requested that Plaintiffs' counsel submit an annual report concerning the status of the case. Lead Counsel, Liaison Counsel, and the PSC provide this report as directed, and respectfully request continued appointment.

## **I. Progress of the Case**

Over the last one-year period, Plaintiffs' leadership team has performed a substantial amount of work in the case and has successfully advanced this case on behalf of the Plaintiffs and proposed class members nationwide.

***Pleadings and Rule 12:*** Following their appointment, Plaintiffs prepared a consolidated amended complaint, and after receiving Defendants' various motions to dismiss, briefed oppositions to them. Dkt. 314, 378, 384, 385, 388, 389, 390. Thereafter, per the Court's instructions, Plaintiffs filed the operative Second Amended Consolidated Class Action Complaint. Dkt. 530. At the same time, Plaintiffs also underwent extensive conferral efforts to substitute and dismiss certain Defendants, culminating in an omnibus joint submission to the Court streamlining the litigation, which the Court granted. Dkt. 528, 563. Defendants again filed various motions to dismiss, and Plaintiffs' counsel briefed a second round of oppositions to Defendants' motions, each of which involved conferrals with Defendants to narrow and clarify the issues for the Court to adjudicate. Dkt. 612, 613, 614, 615, 616, 618, 619, 621, 623; *see also* Dkt. 544. In December 2023, during a four-hour hearing, Plaintiffs successfully argued against Defendants' Omnibus Motion to Dismiss Multifamily Plaintiffs' Second Amended Consolidated Class Action Complaint (Dkt. 592), ultimately prevailing against that Omnibus Motion, as well as other of Defendants' motions. Dkt. 691; *see also* Dkt. 685, 687, 688.

***Case Management Negotiations and Orders:*** Lead Counsel also worked with defense counsel to negotiate a Case Management Order (Dkt. 818), Protective Order (Dkt. 828), ESI Protocol (Dkt. 815), Rule 502 Order (Dkt. 822), an Order on Expert Discovery (Dkt. 814), a Deposition Protocol (Dkt. 816), and a Supplemental Order on Deposition Limits (Dkt. 911). Negotiating each protocol included extensive conferrals to reach agreement or, in the absence of

complete agreement, to narrow any areas of dispute. For example, the parties had extensive conferrals via email, videoconference, and in person to narrow the areas of dispute on the supplemental deposition protocol and to streamline the presentation of disputed issues to facilitate expeditious resolution by the Court. *See* Dkt. 908 (5/8/24 Joint Motion for Discovery Conference on Deposition Limits) and Dkt. 911 (5/13/24 Stipulation and Order on Deposition Limits).

***Conferences with the Court:*** Lead Counsel has represented Plaintiffs at periodic in-person status conferences and telephonic conferences with the Court. *See, e.g.,* Dkt. 243 (5/31/23 conference), Dkt. 486 (addressing 8/1//23 teleconference), Dkt. 495 (8/7/23 conference), Dkt. 847 (3/8/24 conference), Dkt. 880 (4/10/24 telephonic conference). Lead Counsel has also worked cooperatively with Defendants to prepare periodic Status Reports to the Court outlining the case's progression and to address specific issues requested by the Court. *See, e.g.,* Dkt. 546, 706, 835, 841, 872, 883, 909, 920.

***Time and Expense Reporting:*** Plaintiffs prepared a proposed Order on Common Benefit Work and Expenses for the Court's consideration, and consistent with the Court's Order on Common Benefit Work and Expenses (Dkt. 302), Lead Counsel has collected monthly time and expense reports from all counsel working on the case and has regularly reviewed and audited those reports.

***Discovery of Plaintiffs:*** Lead Counsel has coordinated communications with the Class Representatives and worked with the Class Representatives to respond to multiple rounds of discovery, including requests for production and two sets of interrogatories, and coordinated initial productions for each Class Representative. Lead Counsel have engaged in meet and confer efforts with Defendants over Defendants' discovery requests and are continuing to review the collections of Plaintiffs' documents for responsive documents.

***Discovery of Defendants:*** Plaintiffs have served data and document requests on all Defendants. Given the different types of evidence sought from each, Plaintiffs served tailored requests to: (1) RealPage, (2) Thoma Bravo; and (3) the Property Defendants. Soon after the appointment of Interim Co-Lead Counsel, Plaintiffs promptly engaged a prominent economics group to assist Plaintiffs in understanding the underlying data that trains and ultimately informs the outputs generated by complex algorithmic pricing models. Plaintiffs' dedication to understanding these underlying principles early on provided Lead Counsel with a strong foundation to draft targeted and streamlined data requests from the start to minimize any claim of burden in the first instance, which requests make up Plaintiffs' First Set of Requests for Production. Likewise, the document requests contained in Plaintiffs' Second Set of Requests for Production were informed by Lead Counsel's collaborative, years'-long investigations, research, public data, and continuous learning in the field. In addition to Plaintiffs' First and Second Sets of RFPs, Plaintiffs have served one set of interrogatories and one set of requests for admission on all Defendants.

Over the last couple of months, attorneys for each firm within the leadership structure have been engaged in regular and ongoing good-faith conferrals with Defendants concerning Plaintiffs' discovery requests and Defendants' responses. These have included identifying appropriate custodians, search terms, requests that may warrant further refining, and/or responses that may require supplementation. These efforts have involved hundreds of hours of meet and confer sessions with each of the 40+ Defendants in the case, coordinated by Lead Counsel. Lead Counsel, Liaison Counsel, and the PSC have made every effort to reach consensus with Defendants and avoid burdening the Court with motion practice.

As one example of Plaintiffs' efforts, Lead Counsel negotiated with RealPage to obtain the production of over 700,000 documents that RealPage produced to the Department of Justice in response to civil investigative demands. Plaintiffs have assembled an initial team of over thirty document reviewers, supervising attorneys, and litigation support staff to ensure orderly, efficient, and effective procedures for processing, ingesting, and reviewing these and other documents produced thus far. Plaintiffs envisage adding further attorneys to the review as Defendants' productions continue.

***Settlement/Mediation Efforts:*** Plaintiffs have engaged in three formal, daylong mediation sessions through the Court-appointed mediators from Phillips ADR Enterprises. Plaintiffs continue to engage in extensive negotiations both through Phillips ADR Enterprises and bilaterally with certain Defendants. Plaintiffs have already reached settlements in principle with three Defendants and are in the process of finalizing settlement terms.

***Other Efforts:*** After the Court's Appointment Order, Plaintiffs' counsel has also spent considerable time volunteering and commenting at algorithmic pricing conferences, panels, mock trials, and other forums.<sup>1</sup>

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<sup>1</sup> For example, so far this year, attorneys from Co-Lead firms Scott+Scott and Hausfeld participated on panels and in the mock trial at the ABA's 72<sup>nd</sup> annual Spring Conference, which this year largely focused on Artificial Intelligence and competition law (4/10 – 4/12/24). In January 2024, co-lead counsel Swathi Bojedla was invited to speak at the Miami Law Class Action & Complex Litigation Forum, along with the current and former Deputy Directors of the FTC's Bureau of Competition, where she provided an update to a group of federal judges and antitrust practitioners about algorithmic price-fixing and antitrust law. In May 2024, Scott+Scott attorney Fatima Brizuela was invited to speak on a panel at the American Antitrust Institute's 25<sup>th</sup> annual Policy Conference, assessing current litigation involving digital information sharing and algorithmic pricing, from the plaintiff's perspective. Ms. Brizuela was joined by esteemed professionals providing unique perspectives, including counsel representing one of the Defendants in this matter, and Cecilia Cheng of the Department of Justice. Most recently, Gary Smith of Hausfeld LLP, organized and participated in a free webinar hosted by the California Lawyers Association, titled "AI Antitrust Recent Developments: A Roundtable Discussion on Pending

## **II. The Composition of the Leadership Team**

The Court-appointed Lead Counsel and Liaison Counsel include a diverse leadership group, including three women, one of whom is a woman of color. In turn, Plaintiffs' counsel has staffed this case with a strong and diverse team taking on real, substantive work. For example, many of Plaintiffs' meet and confers are led by women, young attorneys, and attorneys of color. Beyond conferrals, leadership has made a concerted effort to give younger attorneys significant roles in the case with substantive, and sometimes supervisory responsibilities. This includes coordinating and supervising the document review team, working directly with clients to respond to discovery, handling critical research assignments, and regularly participating in strategic planning sessions with the appointed leadership attorneys.

## **III. Reaffirmation Concerning Third-Party Litigation Funding**

On January 17, 2024, Plaintiffs provided a Notice stating that Plaintiffs' Interim Co-Lead Counsel, Plaintiffs' Liaison Counsel, and Plaintiffs' Steering Committee (and their respective law firms) had not engaged any third-party funding sources for this litigation. Dkt. 702. That has not changed, and Plaintiffs accordingly re-affirm that statement here.

## **IV. Support for Leadership Slate**

The undersigned Interim Co-Lead Counsel, Plaintiffs' Liaison Counsel, and the members of the PSC each support the reappointment of the current leadership slate.

## **CONCLUSION**

Plaintiffs' Lead Counsel, Liaison Counsel, and PSC members were honored by this Court's appointment. As the Court observed at the March 8, 2024 hearing, this case raises issues of strong

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Litigation at the Intersection of AI and Antitrust,” alongside counsel from Scott+Scott’s leadership and the DOJ, among others.

public importance that affect renters nationwide, and there is a lot at stake. On an expedited schedule, Plaintiffs' counsel have successfully advanced this case efficiently and effectively in the interest of the Class and judicial economy. Plaintiffs respectfully request that the Court reaffirm appointment of Interim Co-Lead Counsel, Liaison Counsel, and the Plaintiffs' Steering Committee on behalf of Plaintiffs and the Class in the above-captioned matter.

Dated: June 13, 2024

/s/ Tricia R. Herzfeld

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### **CERTIFICATE OF SERVICE**

I hereby certify that on June 13, 2024, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

/s/ Tricia R. Herzfeld

Tricia R. Herzfeld